

1 Richard J. Grabowski (State Bar No. 125666)
rgrabowski@jonesday.com
2 Marc S. Carlson (State Bar No. 210592)
mscarlson@jonesday.com
3 Bradley E. Schwan (State Bar No. 246457)
bschwan@jonesday.com
4 JONES DAY
3 Park Plaza
5 Suite 1100
Irvine, CA 92614
6 Telephone: (949) 851-3939
Facsimile: (949) 553-7539
7

8 Attorneys for Defendant
PRICEGRABBER.COM, INC.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 SHLOMO GONEN, Individually and
as Representative for all others
14 similarly situated and the General
Public,

15 Plaintiff,

16 v.

17 PRICEGRABBER.COM, INC.,
18 DBUYS.COM, INC., PIONEER
ELECTRONICS (USA), INC., and
19 DOES 1-10, Inclusive,

20 Defendants.
21

Case No. 08 CV 03032 ABC RC

Hon. Audrey B. Collins, Presiding

**NOTICE OF MOTION AND
MOTION TO DISMISS
PURSUANT TO FED.R.CIV.P.
12(B)(6)**

Date: July 14, 2008
Time: 10:00 a.m.
Courtroom: 680

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 **PLEASE TAKE NOTICE** that on July 14, 2008 at 10:00 a.m., or as soon
24 thereafter as the matter may be heard in the above-entitled court, located at 255 East
25 Temple Street, Los Angeles, California 90012, Courtroom 680, defendant
26 PriceGrabber.com, Inc. will, and hereby does, move the court to dismiss the action
27 pursuant to Fed.R.Civ.P. 12(b)(6) because Plaintiff Shlomo Gonen's complaint fails
28 to state a claim upon which relief can be granted, on the grounds that:

1 1. Under California law, an entity (such as PriceGrabber) that publishes
2 an advertisement for a third party cannot be held liable for misrepresentations made
3 by the third party in those advertisements. Thus, Plaintiff's First Cause of Action
4 for violation of Civil Code § 1750 *et seq.*, Second Cause of Action for violation of
5 Business & Professions Code § 17200 *et seq.*, Third Cause of Action for violation
6 of Business & Professions Code § 17500 *et seq.*, and Fourth Cause of Action for
7 violation of the Song-Beverly Act fail.

8 2. The federal Communications Decency Act, 47 U.S.C. § 230,
9 specifically bars claims against an "Interactive Computer Service" such as
10 PriceGrabber for content created by another party, such as Defendant Dbuys.com,
11 Inc., even if the content appeared on PriceGrabber's website and even if
12 PriceGrabber had the power to screen, edit or otherwise modify the information to
13 warn against or to prevent the harm caused by the misrepresentations. Thus,
14 Plaintiff's First Cause of Action for violation of Civil Code § 1750 *et seq.*, Second
15 Cause of Action for violation of Business & Professions Code § 17200 *et seq.*,
16 Third Cause of Action for violation of Business & Professions Code § 17500 *et*
17 *seq.*, and Fourth Cause of Action for violation of the Song-Beverly Act fail.

18 3. Plaintiff's Fifth Cause of Action for Breach of Implied Warranty fails
19 because PriceGrabber was not the seller of the product which Plaintiff purchased
20 from Defendant Dbuys.com, Inc., and the sale of the product did not occur in
21 California.

22 This motion is made following the conference of counsel pursuant to Central
23 District Local Rule 7-3 which took place on June 2, 2008.

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1 This motion is based on this Notice of Motion and Motion, the Memorandum
2 of Points and Authorities filed herewith, the pleadings and papers filed herein, and
3 such other matters as may be considered at the hearing of this motion.

4 Dated: June 16, 2008 JONES DAY

6 By: /s/
7 Richard J. Grabowski

8 Attorneys for Defendant
9 PRICEGRABBER.COM, INC.
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CERTIFICATE OF SERVICE

I, Richard J. Grabowski, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3 Park Plaza, Suite 1100, Irvine, California 92614. On June 16, 2008, I served a copy of the NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(B)(6) by electronic transmission.

I am familiar with the UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following CM/ECF users were served:

Michael L. Kelly
Behram V. Parekh
Kirtland & Packard LLP
2361 Rosecrans Avenue, Fourth Floor
El Segundo, CA 90245
Email: mlk@kirtlandpackard.com

Executed on June 16, 2008, at Irvine, California.

/s/ Richard J. Grabowski
Richard J. Grabowski